IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

OP.No. 4417 of 2001(A)

PETITIONER:
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1. THE THIRUVALLA SERVICE CO-OPERATIVE BANK LTD. NO. 1307, KAVUMBHAGOM P.O., THIRUVALLA, REPRESENTED BY ITS SECRETARY.

2. P.S. MANOHARAN, PRESIDENT, THE THIRUVALLA SERVICE CO-OP. BANK LSTD. NO. 1307, KAVUMBHAGOM P.O., THIRUVALLA.

BY ADV. SRI.TOMY SEBASTIAN
SRI.N.RAMDAS
SRI.C.S.GOPALAKRISHNAN NAIR
SRI.K.RADHAKRISHNAN (P)

RESPONDENTS:
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1. THE DEPUTY LABOUR COMMISSIONER AND SECRETARY, STATE ADVISORY CONTRACT LABOUR BOARD, THIRUVANANTHAPURAM (APPELLATE AUTHORITY)

2. THE DEPUTY TAHSILDAR (REVENUE RECOVERY), THIRUVALLA.

3. P. SANTHAKUMARI, LAKSHMI SADANAM, KIZHAKKUM MURI, KAVUMBHAGOM P.O., THIRUVALLA 689 102.

R3 BY ADV. SRI.PHILIP M.VARUGHESE
R1 AND R2 BY GOVERNMENT PLEADER SRI. BASANT BALAJI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/08/2007, ALONG WITH OP NO. 31083 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 7357 OF 2001 IN OP 4417 OF 2001

DISMISSED

6.8.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE MEMO OF CHARGES ISSUED TO THE 3RD RESPONDENT BY THE PRESIDENT OF THE BANK.

EXT.P2 TRUE COPY OF THE STATEMENT SUBMITTED BY THE THIRD RESPONDENT BEFORE THE PRESIDENT OF THE BANK DATED 29.7.1998

EXT.P3 TRUE COPY OF THE RESOLUTION OF THE BANK DATED 11.10.1988

EXT.P4 TRUE COPY OF THE STOCK VERIFICSATION REPORT OF THE BANK DATED 14.12.1988

EXT.P5 TRUE COPY OF THE PROCEEDINGS OF THE BANK APPOINTING THE ENQUIRY OFFICER FOR CONDUCTING DOMESTIC ENQURIY AGAINST THE THIRD RESPONDENT DSATED 22.5.1989

EXT.P6 TRUE COPY OF THE ENQUIRY REPORT SUBMITTED BY THE ENQUIRY OFFICER TO THE BANK DATED 18.5.1990

EXT.P7 TRUE COPY OF THE COMMUNICATION ISSUED BY THE FIRST RESPONDENT TO THE BANK DATED 29.6.1999

EXT.P8 TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE FIRST RESPONDENT TO THE BANK DATED 6.4.2000

EXT.P9 TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT TO THE BANK DATED 31.1.2001

EXT.P10 TRUE COPY OF THE ORDER IN S.A.NO. 33/92 OF THE DEPUTY LABOUR COMMISSIONER AND SECRETARY, TRIVANDRUM.

EXT.P11 COPY OF JUDGMENT IN W.A.NO. 1449 OF 2007 DATED 21.6.2007

EXT.P12 COPY OF ORDER IN CMP NO. 7357 OF2001 IN OP 4417 OF 2001 DATED 13.6.2007

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NOs. 4417 & 31083 OF 2001

Dated this the 6th day of August, 2007

C.R.

JUDGMENT

Petitioner in O.P.No. 4417 of 2001 is a Co-operative Bank challenging Ext.P10 order issued by the appellate authority under Section 18 of the Kerala Shops and Commercial Establishments Act, 1960 ordering reinstatement of the third respondent in service or to give compensation in lieu thereof. Third respondent was in charge of Sales Depot maintained by the petitioner. She was suspended from service on 6.12.1988 on charges of irregularity leading to loss of around Rs. 3000/- to the petitioner. Third respondent admitted the liability and remitted the loss sustained by the petitioner which was Rs. 2633/-. However, the petitioner declined to accept it and ordered enquiry. The Enquiry Officer found her guilty of almost on all charges levelled against her and based on the findings of the Enquiry Officer, third respondent was removed from service. The appeal filed against the said order by the third respondent was disposed of by the appellate

authority vide Ext.P10 order, against which WPC 4417 of 2001 is filed by the Bank. Third respondent has filed O.P.No. 31083 of 2001 for modification of the appellate authority's order, and seeking for full backwages. I heard counsel appearing for the employer, and the delinquent-employee and have gone through Ext.P10 order of the appellate authority produced in OP 4417 of 2001.

2. Even though counsel for the employer-Bank submitted that the delinquent employee admitted irregularity, and she was found guilty on enquiry by the Enquiry Officer and therefore punishment was rightly imposed, counsel for the delinquent employee submitted that the sole basis for finding the employee guilty in the enquiry is based on admission made by the delinquent employee, which was done at the request of Secretary of the Bank. He contended that there is no independent evidence to show any misappropriation or irregularity committed by the delinquent employee to sustain the punishment. On going through Ext.P10 order of the appellate authority, I am unable to uphold the contention of the employer-Bank because the Enquiry Officer himself has in evidence conceded that his finding of guilt of the delinquent employee is based on her own admission. However,

evidence given by the former President of the employer-Bank is to the effect that at the request of Secretary and President of the Bank the delinquent employee gave a letter of admission and remitted the loss sustained by the Bank on their undertaking to reinstate her. I do not find any justification to disregard the convincing oral evidence given by the former President of the Bank in support of the delinquent employee. Moreover the letter of admission followed by request for pardon could be naturally induced by the Secretary of the Bank as alleged. Further it is to be noted that apart from the so-called admission, irregularity is not established. All that is stated is that in the course of sales, the Bank has suffered loss of around Rs. 3000/- and the delinquent employee has paid part of the amount stated to have been lost on account of her fault. It is in evidence that even though Sales Assistant was also made to pay loss, which is below Rs. 1000/- no disciplinary action is taken against him. In fact the appellate authority himself has held that suspension beyond one year without permission of the Joint Registrar of the Co-operative Societies is irregular and on that ground alone, the delinquent employee was entitled to relief. The appellate authority has highlighted the informal

arrangement permitted used in the sales office managed by the Bank wherein the Directors and employees of the bank were allowed to make purchases on credit basis. In other words, the Bank itself did not maintain any strict discipline in regard to sales done in the shop. Apart from all these, the agricultural officer to whom credit sales were made confirmed that the delinquent employee was not involved in any irregularity or fraud. Moreover the delinquent employee has paid Rs. 2633/- towards loss sustained by the Bank which shows that the delinquent employee who had 18 years of service was not involved in deliberate fraud. I find the appellate authority has considered the entire evidence in detail and this Court certainly cannot reappraise the same evidence and come to a different conclusion in writ proceedings. The findings are quite reasonable and warrant no interference by this Court.

3. Counsel for the petitioner submitted that the relief granted itself is not proper because the compensation under Section 18(4) takes in compensation for the loss of service prior to termination and subsequent promotions that would have been given. I do not think there is any irregularity in the compensation granted by the appellate authority after finding that the delinquent employee's termination was

illegal. 50% of the backwages is given as compensation for period prior to the date of order and petitioner was given an option to reinstate her with such backwages. The petitioner however chose to contest the matter leading to liability for additional compensation in lieu of reinstatement. The delinquent employee had 18 years of service and was left with 20 years of service when she was suspended in 1988. I do not find anything wrong in fixing the compensation at 50% of the backwages till date of order and thereafter in lieu of reinstatement at Rs. 1,20,000/- which includes loss of wages and terminal benefits.

O.P.No. 4417 of 2001 filed by the employer is devoid of any merit and is dismissed. Since the compensation awarded is quite reasonable I find no ground to enhance the compensation at the request of the delinquent employee. Therefore O.P.No. 31083 of 2001 is also dismissed.

(C.N.RAMACHANDRAN NAIR)
Judge